IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3150 OF 2005.
IN
FIRST APPEAL ST.NO.35093 OF 2003.

Smt.Sujata Deepak Shinde. ... Applicant.
Versus.
The New India Assurance Co.Ltd
and others. ... Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 19th Sept., 2007.

P.C.:

1. The 1st Respondent is the Appellant in the First Appeal and an award made by the Motor Accident Claims Tribunal against the 1st Respondent on 3rd December 2002 has been challenged in the First Appeal. The Award is in case of a fatal accident. In the Application for stay, on 29th March 2004 an ad-interim stay of execution of the Award was granted in favour of the Respondents subject to deposit of 50% of the amount as per the Award. The Application for condonation of delay has remained pending till today as the service of notice is not effected to the 2nd Respondent. For the last three years no steps are taken by the 1st Respondent-Insurer (Appellant) for service of notice to all the Respondents in the Application for condonation of delay.

2. Considering the facts and circumstances of the

case, the earlier ad-interim order will have to be modified and the 1st Respondent will have to be directed to deposit the entire amount payable as per the impugned Award. The 1st Respondent is the Insurance Company and the finding of the Tribunal is that the 1st Respondent has not established the breach of the terms and conditions of the policy by the insured. There is a prayer for permitting the Applicant to withdraw the compensation amount. The Application for condonation of delay is yet to be heard. For the time being the Applicant is permitted to withdraw a sum of Rs.50,000/- without security and a further sum of Rs.75,000/- on furnishing adequate security to the satisfaction of the Tribunal.

3. Hence the Civil Application is disposed of by passing the following order:

i) Ad-interim order dated 29th March 2004 passed on Civil Application No.4459 of 2003 is modified and the 1st Respondent (original Appellant) is directed to deposit the entire balance amount due and payable as per the impugned Award with the concerned Tribunal within a period of six weeks from today. If the amount is not deposited within stipulated time, the ad-interim order granted earlier will stand vacated without

further reference to the Court.

ii) Pending the decition on the Application for condonation of delay, the Applicant is permitted to withdraw a sum of Rs.50,000/- without security and a further amount of Rs.75,000/- on furnishing adequate security to the satisfaction of the concerned Tribunal. The withdrawal of the amount is subject to the final outcome of the Appeal.

iii) The Civil Application stands disposed of.

Judge.